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SUBJECT: UNGA WORKING GROUP ON ASSISTANCE TO VICTIMS OF SEXUAL ABUSE

REF: A. USUN 796 (NOTAL)

1B. STATE 126999 (NOTAL)

1C. USUN 662 (NOTAL)

11. (U) The General Assembly Ad Hoc Working Group on Assistance and Support to Victims of Sexual Exploitation and Abuse (SEA) (by UN staff or related personnel) will meet December 3-7, 2007 to discuss a draft statement of policy and draft strategy (A/60/877). The Chairman of the Working Group (WG), Costa Rican Permanent Representative to the UN Jorge Urbina, would like to "streamline" discussion in advance of the December meeting, in hopes of getting some concrete movement forward on this complex and highly-charged issue in December. He has suggested (ref A) that the WG focus on providing basic assistance to "complainants" and "victims", rather than addressing the range of questions -- legal, medical, social, practical -- that can arise from efforts to investigate, substantiate and resolve claims of assault, paternity and similar issues involving persons in different categories (civilian, military, police), possibly residing in different countries.

12. (U) USUN should advise other delegations that the U.S. views abuse of vulnerable populations and individuals by UN staff or related personnel, including peacekeepers, with the utmost seriousness. Nevertheless, the proposed strategy and statement of policy present numerous challenges. We do not believe that these complicated questions can be resolved between now and December. These questions include, to name just a few, issues of national jurisdiction, legal liability, establishing paternity or other claims when accusers and accused are in different countries, investigation and chains of evidence, substantiating allegations, and protection of victims. We support Ambassador Urbina's recommendation that the WG start by seeking agreement on non-contentious issues, and build from there.

13. (U) Overview:

Immediate response: We recommend that the WG begin by approving immediate, basic support to persons (victims or complainants) alleging SEA or filing a paternity suit. This assistance could take the form of medical attention, including counseling, to meet immediate needs, and should include a clear explanation in the local language and in writing of resources currently available for further action. This should also include contact information to assist the complainant or his/her representative in following up with the relevant TCC, with regard to the claim. It should be made clear that the UN will not serve as the individual's advocate; as noted in paragraph 6 of the draft strategy, the

UN bears no legal liability for acts of SEA committed by UN staff or related personnel.

Funding mechanism: The WG, by which we mean Member States, should be focusing attention on a funding mechanism to provide as much support as possible. The USG believes that the final responsibility for providing longer term support to victims lies with the perpetrators of the SEA (including those fathering children). It may be very difficult, often impossible, to get such redress, but it is inappropriate for the UN to bear the costs. We support a voluntary mechanism, or Trust Fund, to which any Member State could contribute. To the extent that it is possible to recoup such costs from the perpetrators, that should be the goal.

Scope/Applicability: In our view, the General Assembly does not have the authority to mandate adoption of a comprehensive, system-wide strategy. A number of the UN agencies proposed for inclusion in such a strategy operate independently of the General Assembly, with separate chains of command and funding. However, the U.S. has been in the forefront of efforts to establish a consistent, system-wide code of conduct, and the GA should consider endorsing similar efforts to ensure consistency in response to victims and complainants of SEA. The Secretary-General and heads of UN agencies and entities meet regularly as the Chief Executive Board (CEB); this may be the appropriate forum. USUN should pursue this question in discussions with the UN Secretariat and Member States.

Non-financial assistance: As discussed above, responsibility for providing longer term medical, educational, legal and other forms of non-cash assistance, lies ultimately with the perpetrators. The USG does not support the transfer of such costs to UN peacekeeping operations, as proposed in the draft strategy, nor the use of peacekeeping resources to create social programs to address the spectrum of sexual violence, but it may be possible for the appropriate UN agencies already in country to establish working groups to leverage or adapt existing programs. We strongly recommend postponing any detailed discussion of this medium- and longer-term assistance until after the WG has agreed on immediate response and funding.

Paternity: This is an issue which we firmly believe should be deferred for later discussion, given the great variety in national procedures and laws, the difficult questions of privacy, and the challenges of addressing these issues if the alleged father is no longer living in the same country as the mother. It may be easier to establish a policy for certain categories of UN or related personnel. That is, a code of conduct and agreement to specific procedures could be made a condition of employment for civilian staff or UN implementing partners; the same would most likely not apply to troops contributed by Member States to peacekeeping operations, who are managed under different procedures and agreements. While the question of establishing paternity should be deferred until future discussions, the strategy should address immediate assistance to be provided to children who may have been fathered by UN staff or related personnel.

Investigations: Similarly, the question of how to handle investigations becomes complicated by questions of due process for the accused as well as protection for the complainant and Member States' own laws and procedures for protecting their citizens. Moreover, discussion of the investigative process in the context of the victims' assistance strategy risks duplicating and conflicting with discussions already underway in the C-34 and the Fifth Committee. The U.S. believes this issue could also derail any progress in December on more immediate victims' assistance goals, and believes it should not be a topic of discussion in the Working Group's deliberations leading up to and during the December meeting.

Complaints: All complainants should be treated with courtesy, and the process of filing complaints should be made as simple and transparent as possible, including by providing

information materials in the local language. As is already the policy for complaints against personnel attached to UN peacekeeping operations, the UN should publicize its procedures. In the interest of both complainants and accused, there should be an established and confidential procedure for initiating an investigation or counselling a complainant on next steps. It is critical that immediate response to the needs of victims and complainants should be given with respect and in a manner that does not further injure the party filing the complaint.

¶4. (U) Draft Policy Statement and Strategy: In the context of the above discussion, and the USG's desire to have the December meeting of the WG yield positive results, we note that the draft policy statement and strategy tend to blur "victims" and "complainants." We agree that it is likely that SEA is underreported, and do not believe that the clarification of international response to this serious problem is (as some Member States have suggested) an open invitation to fraudulent complaints. Nevertheless, the distinction is important; not all complaints will be made in good faith or be legitimate. As discussed above, we support a consistent system-wide approach to victim assistance, but do not believe that this can be done on the GA's authority. The U.S. underlines that for any such response to have real effect or meaning, Member States must also consider what steps they should take with regard to their own nationals. Also as discussed, the ultimate responsibility for providing assistance and support to victims lies with perpetrators, and we oppose transferring the costs to the UN.

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